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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,515	03/29/2002	Hiroki Kabumoto	020313	4583
23850	7590	06/23/2004	EXAMINER	
ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP			TSANG FOSTER, SUSY N	
1725 K STREET, NW				
SUITE 1000			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20006			1745	

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/088,515	KABUMOTO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Susy N Tsang-Foster	1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 29 March 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) \_\_\_\_\_ is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) 1-19 are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-12, drawn to a first product of a fuel cell comprising a gas diffusion layer that is interposed between the cathode catalyst layer and the second plate and at least one of the gas diffusion layer and the cathode catalyst layer is constructed in such a manner that water retentivity is higher in parts facing the oxidant channels than in parts facing the ribs.

Group II, claim(s) 13-19, drawn to a second product of a fuel cell comprising a gas diffusion layer and an intermediate water retentive layer that contains an ion exchanger interposed between the cathode catalyst layer and the second plate, the intermediate water retentive layer is constructed in such a manner that water retentivity is higher in parts facing the oxidant channels than in parts facing the ribs.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special

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technical features for the following reasons: The special technical feature of group I listed above is structurally different from the special technical feature of group II listed above. In group I, the special technical feature is a gas diffusion layer that is interposed between the cathode catalyst layer and the second plate and at least one of the gas diffusion layer and the cathode catalyst layer is constructed in such a manner that water retentivity is higher in parts facing the oxidant channels than in parts facing the ribs. In contrast, group II does not contain the same technical feature but instead, the special technical feature is a gas diffusion layer and an intermediate water retentive layer that contains an ion exchanger interposed between the cathode catalyst layer and the second plate, the intermediate water retentive layer is constructed in such a manner that water retentivity is higher in parts facing the oxidant channels than in parts facing the ribs.

The technical features shared by Group I and Group II do not make a contribution over the prior art as shown in U.S. Patent No. 6,024,848 which discloses a fuel cell that comprises a cell unit that is formed by arranging a cathode catalyst layer 38 on one surface of a proton exchange membrane 32 and anode catalyst layer 36 on another surface of the proton exchange membrane, a first plate 60 on which fuel channels for supplying a fuel are formed, and a second plate 66 on which oxidant channels for supplying an oxidant and ribs are formed, and the second plate and the first plate sandwiching the cell unit is such a manner that the oxidant channels and the ribs face the cathode catalyst layer and the fuel channels face the anode catalyst layer, and a gas diffusion layer 48 is interposed between the cathode catalyst layer and the second plate (see Figure 2 of the reference).

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2. A telephone call was made to William Kratz (Reg. # 22,631) on 18 June 2004 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

4. Any inquiry concerning this communication or earlier communications should be directed to examiner Susy Tsang-Foster, Ph.D. whose telephone number is (571) 272-1293. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached at (571) 272-1292.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

st/ *Susy Tsang Foster*

Susy Tsang-Foster  
Primary Examiner  
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